

IN THE SUPREME COURT OF FLORIDA

**INQUIRY CONCERNING A
JUDGE, NO. 01-244
CHARLES W. COPE**

CASE NO.: SC01-2670

**RESPONSE TO FLORIDA JUDICIAL QUALIFICATIONS
COMMISSION'S MOTION TO STRIKE AFFIDAVIT OF LINDSAY COLTON**

COMES NOW the Respondent, by and through undersigned counsel, and files this Response to the Florida Judicial Qualifications Commission's Motion to Strike Affidavit of Lindsay Colton and in support thereof states:

1. The instant motion is in all respects a pretext intended to place the Respondent in a false light with this Court and with the media; and is predicated on allegations which are simply untrue.

2. The instant motion alleges that the affidavit bears no relationship to any issue before the Court and that the subject of the affidavit was not an actual or potential witness to any of the charges in the case. The motion further asserts that the details alleged by Ms. Colton in the affidavit have nothing to do with any issue in the case. These representations are simply false.

3. As Special Counsel well knows, he drafted formal charges against the Respondent which expressly accused the Respondent of eavesdropping on the "victim," stealing the key to the "victim's" hotel room, peering into the victim's room, attempting to forcibly enter the room and lying to the police. He also charged the Respondent with alternatively a battery on the "victim."

4. Central to the defense of the formal charges were the issues of whether a) the "victim" was lying in denying that she confided personal matters in Judge Cope, b)

whether the “victim” was lying in her original report to the police that the Respondent attempted to rape her on a beach from which she fled, c) whether the “victim” was lying in denying a consensual intimate encounter in Judge Cope’s hotel room.

5. As early as October 2001, Judge Cope through his counsel appeared before the Investigative Panel of the JQC and advised of the true facts, including the fact that the victim was lying.

6. Special Counsel’s motion is typical of his pattern of conduct whereby he levels false allegations against Judge Cope and then seeks to characterize the exposure of the falsity of such allegation in a manner intended to vilify Judge Cope. In this instance, he accuses Judge Cope of abusing the process of this Court and publicly assassinating the character of “the alleged victim, her family, the former boyfriend and his family.” This motion was intended for and did facilitate public consumption in the editorial page of the St. Petersburg Times.

7. The plain fact of the matter is it was central to the issues in the charges raised by the JQC whether the woman was a willing and eager participant who solicited Judge Cope’s company after disclosing personal details of a relationship with her mother and her boyfriend or whether as the JQC charged Judge Cope clandestinely concealed himself in the vicinity of the woman to eavesdrop on her conversation as alleged in Count I.

8. The woman falsely denied confiding the personal matters to Judge Cope. She also falsely denied accompanying him to his hotel room where he observed a physical anomaly on her body. It was thus directly relevant to the issues in this case to establish by independent evidence that the details proffered to Judge Cope by the woman herself or displayed to him in the privacy of his hotel room, did in fact exist. The witness

confirmed Judge Cope's observations and testimony; and was listed as a witness in the case.

9. Not surprisingly, Special Counsel's motion to strike the affidavit of Lindsay Colton is filed contemporaneous with allegations he makes to this Court concerning the information provided by that witness which are fundamentally erroneous and which the affidavit refutes.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: **Judge James R. Jorgenson**, Chair of the Judicial Qualifications Commission Hearing Panel, 3rd District Court of Appeal, 2001 S.W. 117th Avenue, Miami, Florida 33175-1716; **John Beranek, Esq.**, Counsel to the Hearing Panel of the Judicial Qualifications Commission, P.O. Box 391, Tallahassee, Florida 32302; **John S. Mills, Esq.**, 200 Laura Street, Suite 1150, Jacksonville, Florida 32201; **Heather Ann Solanka, Esq.**, Special Co-Counsel, Foley & Lardner, 200 Laura Street, Jacksonville, Florida 32201-0240; **Brooke S. Kennerly**, Executive Director of the Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; **Thomas C. MacDonald, Jr., Esq.**, General Counsel to the Investigative Panel of the Judicial Qualifications Commission, 100 North Tampa Street, Suite 2100, Tampa, Florida 33602, this 2nd day of December, 2002.

ROBERT W. MERKLE, ESQ.